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By ECF

September 14, 2021

Hon. Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *John Does, et al. v. Hochul, et al.*
21-cv-5067 (E.D.N.Y.) (AMD-TAM)

Dear Judge Komitee:

This Office represents Governor Kathy Hochul and Health Commissioner Howard Zucker (the "State Defendants") in the above-referenced matter. I write in response to the filing by Plaintiffs (ECF No. 30 and 30-1), which references a Temporary Restraining Order ("the *Dr. A* TRO") issued today by Judge David Hurd in *Dr. A v. Hochul* (Civ. No 21-cv-1009) in the Northern District of New York. The *Dr. A* TRO enjoins the State Defendants and Attorney General James from "enforcing, threatening to enforce, attempting to enforce, or otherwise requiring compliance with" the Governor's COVID-19 Vaccine Mandate at issue in the case at bar, specifically stating that

- (a) The vaccine mandate is suspended in operation to the extent that the [New York State Department of Health (DOH)] is barred from enforcing any requirement that employers deny religious exemptions from COVID-19 vaccination or that they revoke any exemptions employers already granted before the vaccine mandate issued;
- (b) The DOH is barred from interfering in any way with the granting of religious exemptions from COVID-19 vaccination going forward, or with the operation of exemptions already granted;
- (c) The DOH is barred from taking any action, disciplinary or otherwise, against the licensure, certification, residency, admitting privileges or other professional status or qualification of any of the plaintiffs on account of their seeking or having obtained a religious exemption from mandatory COVID-19 vaccination; and
- (d) As noted *supra*, since the August 26, 2021 regulation does not require hospital and nursing home employees to receive a vaccine until September 27, 2021, the TRO does not, as a practical matter, go into effect until that date.

Judge Hurd issued the TRO *ex parte*, without considering papers or oral argument in opposition to the relief requested. We respectfully submit that it was improvidently granted, for the same reasons presented by counsel for Defendants at yesterday's oral argument

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demonstrating why Plaintiffs' motion for a temporary restraining order in the present case should be denied. Simply stated, the Governor's COVID-19 Vaccine Mandate imposes an across-the-board vaccination requirement on *all* health care facility workers who can be *safely* vaccinated, and it does not target religion or any religious practice in any way. It is in fact a critical measure intended to prevent the spread of a potentially deadly disease in the midst of a global pandemic, and it is entirely consistent with the Constitution and applicable law.

Thank you for Your Honor's consideration of this matter.

Respectfully submitted,

/s/ Seth J. Farber /

Seth J. Farber
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cc: All Counsel (via ECF)